INDEX.

	Page
SUPPLEMENTARY STATEMENT OF JURISDICTION AND OF THE CASE	1
ARGUMENT	3
I. Jurisdiction	3
II. Standing	3
III. Interlocutory Appealibility	6
IV. The District Court's Order Was a Proper Exercise of Its Discretion	7
CONCLUSION	13
APPENDIX A—Witness Affidavits	A1
(1) Watson Affidavit	A1
(2) Charlton Affidavit	A4
(3) Logan Affidavit	A7
(4) Sanborn Affidavit	A9
APPENDIX B—Affidavit of Petitioner's Counsel	A11

TABLE OF CASES CITED.

	Page
Alderman v. United States, 394 U. S. 165 (1969)	4
Alexander v. United States, 201 U. S. 117 (1906)	7
Allis-Chalmers Mfg. Co. v. City of Fort Pierce, Fla., 323 F. 2d 233 (5th Cir. 1963)	12
Atlantic City Electric Company v. A. B. Chance Company, 313 F. 2d 431 (2d Cir.), stay denied 83 S. Ct. 964 (1963)	12
Atles v. United States, 50 F. 2d 808 (3d Cir. 1931)	4
Bank Line Ltd. v. United States, 163 F. 2d 133 (2d Cir. 1947)	6
Borden Co. v. Sylk, 410 F. 2d 843 (3d Cir. 1969)	6
Carroll v. United States, 354 U. S. 394 (1957)	6
Cobbledick v. United States, 309 U. S. 323 (1940)	7
Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co., 32 F. R. D. 473 (N. D. Ill. 1962)	6
Dennis v. United States, 384 U. S. 855 (1966)	12
DiBella v. United States, 369 U. S. 121 (1962)	7
Donaldson v. United States, 400 U. S. 517 (1971)	5,6
Herman Schwabe, Inc. v. United Shoe Machinery Corp., 194 F. Supp. 763 (D. Mass. 1958)	12
In re Grand Jury Proceedings, 4 F. Supp. 283 (E. D. Pa. 1933)	12
In re Grand Jury Proceedings, 309 F. 2d 440 (3d Cir. 1962)	12
In re Michigan-Ohio Building Corporation, 117 F. 2d 191 (7th Cir. 1941)	3
In re Western Pacific R. Co., 122 F. 2d 807 (9th Cir. 1941)	4
Lawn v. United States, 355 U. S. 339, reh. denied 355 U. S. 967 (1958)	5
Mayer v. National Missile and Electronics, Inc., 326 F. 2d 401 (9th Cir. 1964)	3
Milgram v. Loew's, Inc., 192 F. 2d 579 (3d Cir. 1951), cert. denied, 343 U. S. 929 (1952)	3

TABLE OF CASES CITED (Continued).

	Page
Missouri Pacific R. Co. v. Thompson, 134 F. 2d 139 (8th Cir.), cert. denied, 320 U. S. 806 (1943)	4
Nairn v. Clary, 312 F. 2d 748, reh. denied, 312 F. 2d 748 (3d Cir. 1963)	5
National Nut Co. of California v. Kelling Nut Co., 134 F. 2d 532 (7th Cir. 1943)	7
Sierra Club v. Morton, — U. S. —, 31 L. Ed. 2d 636 (1972)	5
Socony Mobil Oil Co. v. United States, 275 F. 2d 227 (7th Cir. 1960)	7
State of Illinois v. Harper & Row Publishers, Inc., 50 F. R. D. 37 (N. D. Ill. 1969)	12
State of Washington v. American Pipe & Construction Co., 41 F. R. D. 59 (S. D. Cal. 1966)	12
Thomas French & Sons, Ltd. v. International Braid Co., 146 F. 2d 735 (1st Cir. 1945)	6
United States v. Adamant Co., 197 F. 2d 1 (9th Cir.), cert. denied sub nom., Bullen v. Scoville, 344 U. S. 903 (1952)	3
United States v. The American Oil Company, et al., 286 F. Supp. 742 (D. N. J. 1968)	8
United States v. Granello, 365 F. 2d 990 (2d Cir. 1966), cert. denied, 386 U. S. 1019, reh. denied 387 U. S. 949 (1967)	4
U. S. Industries, Inc. v. United States District Court, 345 F. 2d 18 (9th Cir. 1965)	12
Wainwright v. Borden, 368 F. 2d 1000 (5th Cir. 1966)	6
Webb v. Beverly Hills Federal Savings & Loan Assn., 364 F. 2d 145 (9th Cir. 1966)	3
Webster, Cole & Coke Company v. Cassett, 207 U. S. 181 (1907)	7

RULES CITED.

Page

Federal Rules of Criminal Procedure:

Rule 6(e) 8

Rule 16(a)(3) 8

SUPPLEMENTARY STATEMENT OF JURISDICTION AND OF THE CASE.

This Brief is filed on behalf of the plaintiffs, intervenor-plaintiffs, and class members in *City of Philadelphia v. The American Oil Company, et al.*, Civ. No. 647-68 (D. N. J.), *State of New Jersey v. The American Oil Company, et al.*, Civ. No. 90-69 (D. N. J.), and *McCloskey & Company, Inc. v. The American Oil Company, et al.*, Civ. No. 47-70 (D. N. J.), including, the states of New Jersey and Delaware, and the Commonwealth of Pennsylvania. The complaints in those actions allege price fixing and other antitrust violations related to the acts and violations alleged in *United States v. The American Oil Company, et al.*, Crim. No. 153-65 (D. N. J.), a criminal action in which the petitioners pleaded nolo contendere, and related to the acts and violations that were alleged in the companion civil action, *United States v. The American Oil Company, et al.*, Civ. No. 370-65 (D. N. J.).

The petitioners ask the Court to reconsider the law on standing, the law on the appealability of interlocutory orders, and questions of discovery involved in the limited disclosure to the respondents of grand jury testimony previously examined by petitioners themselves in the course of the criminal action.

The Opinion of the United States Court of Appeals for the Third Circuit, filed March 16, 1972, and set forth as Appendix A to the Petition for a Writ of Certiorari, states in material part that:

> "We think the appealability issue is not free from substantial doubt. However, we entertain no such doubt as to the standing issue. When the order was entered in this action the Grand Jury proceedings involved had terminated. Also final judgment had been granted in the criminal proceedings and a consent final decree entered in the government's civil action.

> Furthermore, the order to produce was not directed to the defendants. In these circumstances at least, we fail to see how the defendants had standing to oppose the application. The government's right in such a situation is not before us."

The petitioners' motion for a rehearing was denied by the Court of Appeals in an Order dated April 18, 1972, as follows:

> "The petition for rehearing filed by Appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the Court in banc, the petition for rehearing is denied."

The Order of the District Court complained of by the petitioners was entered in the Government civil action, *United States v. The American Oil Company, et al.* The Orders of March 16 and April 18, 1972, of the United States Court of Appeals for the Third Circuit complained of, and relied upon for purposes of jurisdiction in the Petition for Certiorari were entered in that action. The Petition itself is, however, captioned solely in the action of the *City of Philadelphia, et al. v. The American Oil Company, et al.* in which none of the above orders was entered.

ARGUMENT.

I. Jurisdiction.

The Writ should be denied because the Petition has not been filed in *United States v. The American Oil Company, et al.*, the action in which the appeal below was taken and in which the orders alleged to vest jurisdiction in this Court were entered.

II. Standing.

The Order permitting disclosure of those grand jury transcripts which had been examined by the petitioners was addressed to the Department of Justice, which did not appeal from the Order. The grand jury transcripts in question, containing testimony of petitioners' present and past employees, are in the hands of the Government. In short, the petitioners are not compelled to take any action and their property is not involved.

In arguing that they have standing to appeal from an order not directed to them, petitioners ignore the distinction between standing for that purpose and the standing necessary to bring certain forms of original actions. No one may appeal from a judgment unless he has an interest therein that is direct, immediate and substantial. *Mayer v. National Missile and Electronics, Inc.*, 326 F. 2d 401 (9th Cir. 1964); *In re Michigan-Ohio Building Corporation*, 117 F. 2d 191, 193 (7th Cir. 1941). Even a party to an action may not appeal when he has no appealable interest in the order in question. *Webb v. Beverly Hills Federal Savings & Loan Assn.*, 364 F. 2d 145 (9th Cir. 1966); *United States v. Adamant Co.*, 197 F. 2d 1, 4-5 (9th Cir.), cert. denied sub nom., *Bullen v. Scoville*, 344 U. S. 903 (1952); *Milgram v. Loew's, Inc.*, 192 F. 2d 579, 586 (3d Cir. 1951), cert. denied, 343 U. S. 929 (1952);

Missouri Pacific R. Co. v. Thompson, 134 F. 2d 139, 141 (8th Cir.), cert. denied, 320 U. S. 806 (1943); *In re Western Pacific R. Co.*, 122 F. 2d 807 (9th Cir. 1941); *Atles v. United States*, 50 F. 2d 808, 810 (3d Cir. 1931).

In analogous circumstances a defendant in a criminal case is not in a position to challenge the unconstitutional seizure of documents belonging to a third party. *Alderman v. United States*, 394 U. S. 165 (1969); *United States v. Granello*, 365 F. 2d 990, 996 (2d Cir. 1966), cert. denied, 386 U. S. 1019, reh. denied 387 U. S. 949 (1967).

Even under the decisions cited by petitioners relating to the bringing of an original action, petitioners lack standing. It is evident that the only interest alleged by petitioners in support of their standing lies in preventing the use at trial of information derived from the grand jury transcripts. The Order of the United States District Court, entered October 15, 1971, and printed as Appendix B to the Petition, provides:

> "All information revealed by the documents shall be accorded confidential treatment. Any such documents or information revealed under this Order to the treble damage parties or any other person assisting in the prosecution or defense of those treble damage actions shall not be revealed by them to any other person, or used, except in the prosecution or defense of those treble damage actions."

Petitioners, therefore, have no presently cognizable interest in preventing inspection. At very least, until the case proceeds to trial, and the plaintiffs offer in evidence information derived from the transcripts, the petitioners do not have a sufficiently direct and immediate interest to support standing. They will not be injured by the inspection, as opposed to use at trial, of the grand jury transcripts.

The Court in *Sierra Club v. Morton,* — U. S. —, 31 L. Ed. 2d 636 (1972), cited by petitioners, recently reiterated that "injury in fact" is required for standing, and that the relevant inquiry is whether the party "is himself adversely affected". The Court, in dismissing the action, held that ". . . broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must have himself suffered an injury." Absent statutory expansion, orders to inspect are not appealable, where there will be adequate opportunity to challenge any attempted use of the testimony at trial. See *Lawn v. United States,* 355 U. S. 339, 350, reh. denied 355 U. S. 967 (1958).

The decision of the Court of Appeals in this case is not a novel one. Almost a decade ago in the electrical equipment antitrust actions, it was held that corporate defendants lack standing to challenge an Order releasing grand jury transcripts. *Nairn v. Clary,* 312 F. 2d 748, reh. denied, 312 F. 2d 748 (3d Cir. 1963).

This Court in *Donaldson v. United States,* 400 U. S. 517 (1971) held that a taxpayer under investigation by the Internal Revenue Service has no right to object to a summons issued to his employer and accountant to produce records relating to him. The Court stated:

> "Each of the summonses here, we repeat, was directed to a third person with respect to whom no established legal privilege, such as that of attorney and client, exists, and had to do with records in which the taxpayer has no proprietary interest of any kind, which are owned by the third person, which are in his hands, and which relate to the third person's business transactions with the taxpayer." 400 U. S. at 523.

The Court recognized that the taxpayer's only interest lay in the fact that those records presumably contained

details of significance for federal income tax liability, 400 U. S. at 530, 531, just as the only interest of the petitioners herein in the grand jury transcripts lies in the possibility that they contain information relating to their antitrust liability. The transcripts in this case, like the records in *Donaldson*, are not the property of petitioners, nor was the District Court Order directed to petitioners. The mere desire in and of itself to keep such information from the knowledge of the plaintiffs does not give rise to an appealable interest. The Court of Appeals in the present case found the issue free from substantial doubt.

III. Interlocutory Appealability.

The Court of Appeals also questioned the interlocutory appealability of the District Court's Order, although it did not decide that issue.

Respondents could have moved in their own actions, pending before the same District Court, for an Order requiring the United States Government, as a third party, to produce the transcripts which are the subject of dispute. *Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co.*, 32 F. R. D. 473, 477 (N. D. Ill. 1962). A discovery Order entered in the pending treble damage actions would be interlocutory and unquestionably not subject to immediate appeal. E.g., *Carroll v. United States*, 354 U. S. 394 (1957); *Thomas French & Sons, Ltd. v. International Braid Co.*, 146 F. 2d 735 (1st Cir. 1945); *Bank Line Ltd. v. United States*, 163 F. 2d 133 (2d Cir. 1947); *Wainwright v. Borden*, 368 F. 2d 1000 (5th Cir. 1966); *Borden Co. v. Sylk*, 410 F. 2d 843 (3d Cir. 1969).

The District Court's Order expressly provides that the documents to be inspected, including the Grand Jury transcripts, can be used only in the prosecution or defense of the pending treble damage actions. The only interest

the petitioners have been able to invoke involves not the outcome of the government suit, but the outcome of the private actions.[1] A holding that because the District Court Order was captioned in the context of the United States civil action, rather than in the pending treble damage actions, its status as incident to the treble damage actions is altered, would elevate form over substance.

The Court, in a series of cases, has held that orders entered in collateral, ancillary, or incidental proceedings are not to be invested with "finality" if they relate to another pending proceeding. *Alexander v. United States,* 201 U. S. 117 (1906); *Webster, Cole & Coke Company v. Cassett,* 207 U. S. 181 (1907); *Cobbledick v. United States,* 309 U. S. 323 (1940); *DiBella v. United States,* 369 U. S. 121 (1962). See also, *National Nut Co. of California v. Kelling Nut Co.,* 134 F. 2d 532 (7th Cir. 1943), and *Socony Mobil Oil Co. v. United States,* 275 F. 2d 227 (7th Cir. 1960).

If the treble damage plaintiffs seek to offer the grand jury transcripts in evidence, petitioners will have full opportunity to object. They can thus preserve whatever right they may have to argue that it was error to have granted access for use in the pending cases. Since it is not inspection, but use in court, of the transcripts that could arguably affect the defendants, the validity of inspection should not be decided in an interlocutory and piecemeal appeal.

IV. The District Court's Order Was a Proper Exercise of Its Discretion.

The Court of Appeals did not reach, and respondents will not argue at length, the soundness of the District

1. Indeed, petitioners have filed their Petition for Certiorari in the City of Philadelphia action, rather than in the United States civil action.

Court's discretionary Order on inspection. Setting aside the veil of secrecy with which the Petition has surrounded the relevant facts suffices to establish the soundness of that Order.

It is, for example, repeatedly stated in the Petition that the petitioners were permitted to inspect the Grand Jury transcripts upon a holding that the testimony of an employee is testimony of his employer, and pursuant to Rule 16(a)(3) of the Federal Rules of Criminal Procedure. Petition at pp. 3, 4, 12-15. This is alleged in order to distinguish the position of the petitioners from that of the respondents. In fact, the District Court in ordering disclosure to petitioners in the criminal action grounded its decision upon both Rule 16(a)(3) and upon Rule 6(e), a general disclosure provision. Further, the District Court in its Opinion granting disclosure stated that:

> "It is clear from the cases that a request for disclosure of Grand Jury testimony, either under Rule 6(e) or Rule 16(a)(3), is an appeal to the discretionary powers of the Court. That being the case, this Court can see no reason for becoming entangled in a semantic argument in attempting to determine whether, for purposes of Rule 16(a)(3), there is a conceptual identity between a corporation and its officers and employees." *United States v. The American Oil Company, et al.*, 286 F. Supp. 742, 752 (D. N. J. 1968).

Similarly, it is stated in the Petition that "none of the transcripts were reproduced, and the defendants obtained no copies." Petition at p. 4. But there is a failure to disclose that counsel for the petitioners took and maintained lawyer's notes on the substance of the transcripts they examined. *E.g.*, Transcript of Hearing of August 12, 1971, at p. 53.*

* "Transcript", in this Brief, refers to transcripts in *United States v. American Oil Company, et al.*, Civ. No. 370-65 (D. N. J.).

The petition states that "none of the private plaintiffs has bothered to take any depositions". Petition at p. 5. The petition neglects to reveal that the defendants sought and received, over the objection of the private plaintiffs, a stay of all discovery for over one year in the private actions, pending trial of the criminal action.[2]

It is said that, "Both the Government and the petitioners opposed the private plaintiffs' applications." Petition at pp. 5-6. The Government in fact took no position as to whether particularized need had been shown by the respondents. Thus, during the second hearing on the inspection issue, Mr. Repetto, an attorney for the Department of Justice, stated that:

> "Miss Korman [an attorney for the plaintiffs-respondents] is correct in saying that the government is a disinterested party in terms of the grand jury transcripts. But I can't say that we are an uninterested party. Our position is, as your Honor indicated on August 12, a paragraph similar to the government paragraph 3 submitted at that time, which required a showing of particularized need, would be included in the Order. For that reason we say that we take no position on what that particularized need would be in the circumstances of this case." Transcript of Hearing of August 30, 1971, at p. 53.

The Government similarly declared in a Memorandum submitted to the District Court on August 20, 1971, that: "Since this Court indicated on August 12, 1971 that it would require a showing of particularized need for the inspection of grand jury transcripts, and since that procedure was followed in a previous application to this Court, the Gov-

2. The stay was not vacated until the respondents pleaded nolo contendere prior to trial and almost four years after indictment.

ernment takes no position on what a 'particularized need' would be in the circumstances of this private case . . ." Memorandum at p. 6. The Court of Appeals, in its Opinion of March 16, 1972, printed as Appendix A to the Petition, found that, "The defendants opposed the application whereas the Government did not oppose limited production." Significantly, the Department of Justice did not join in the petitioners' appeal in the Third Circuit.

The most significant omission is in the Petition's description of the grounds of the District Court's decision. It is said that the decision rested solely upon the petitioners' prior access to the transcripts and the "mere" passage of time.[3] Petition at pp. 6, 13, 14.

No reference is made to the sworn affidavits of various witnesses stating that they could not remember their testimony before the grand jury. These were filed by the defendants in the criminal case, and were before the District Court in this case. Typically, these affidavits, dating back to December, 1967, state that the witness had "little specific present recollection" of testimony before the Grand Jury. A representative sample of these affidavits is appended as Exhibit "A".

Counsel for the defendant oil companies also submitted their own affidavits in the criminal action, arguing that "particularized need" justified the disclosure of the grand jury testimony because: the alleged conspiracy covered ten

3. These are not insignificant criteria. The petitioners argued at length in the criminal action in order to secure these transcripts for themselves, that mutuality is the touchstone of fairness, and that the government's possession of the transcripts made inspection by the opposing parties imperative. Similarly, Mr. Topkis, a member of the law firm which prepared the Petition for a Writ of Certiorari, argued in the criminal case that, "Anybody who has not forgotten what happened before the Grand Jury, let alone what happened in 1955, has a most extraordinary memory . . .". *United States v. American Oil Company, et al.*, Crim. No. 153-65, Transcript of Hearing of April 16, 1968, at p. 142.

years, three states and countless transactions; because witnesses would find it difficult to recall what happened given the long passage of time since the grand jury inquiry three and one-half years before and commencement of the alleged conspiracy 13 or more years before [a shorter time lapse than that now facing respondents]; and because it is unfair for the prosecution to have exclusive access to grand jury transcripts, and disclosure is warranted "[i]f the trial of this action is to be a search for the truth . . . and not a sporting event . . . ." An example of one of their affidavits is appended as Exhibit "B".

The witness affidavits formed one of the explicit bases for the decision of the District Court. That Court's decision from the bench, following the second hearing on the grand jury issue, was as follows:

> "A lot of time has elapsed in this case—many, many years. *Some affidavits made by witnesses of the defendants indicate a lapse of memory here or there, or no clear recollection of what happened.* And, in all fairness, it would have to be an extraordinary memory that could recall today what happened years ago.
>
> "In addition to the lapse of time, we have another factor here which I think is important. And that is that those transcripts relating to the minutes of particular employees and officers of the defendants have been seen and made available to the defendants.
>
> "I think—if you combine these two things—lapse of time plus the fact that they have already been seen by the defendants—that makes out, in my opinion, a sufficient reason for making them available also to the treble damage plaintiffs. That's enough particularized need for me." Transcript of Hearing of August 30, 1971, at pp. 180-181. (Emphasis added.)

It is clear that in the context of the facts of this case, the decision of the District Court was sound. See, e.g., *Dennis v. United States*, 384 U. S. 855, 874-75 (1966); *U. S. Industries, Inc. v. United States District Court*, 345 F. 2d 18, 21-23 (9th Cir. 1965); *In re Grand Jury Proceedings*, 4 F. Supp. 283 (E. D. Pa. 1933); *Herman Schwabe, Inc. v. United Shoe Machinery Corp.*, 194 F. Supp. 763 (D. Mass. 1958); *State of Washington v. American Pipe & Construction Co.*, 41 F. R. D. 59, 63-64 (S. D. Cal. 1966); *State of Illinois v. Harper & Row Publishers, Inc.*, 50 F. R. D. 37, 41 (N. D. Ill. 1969). It is well settled that a motion to inspect grand jury testimony is addressed to the discretion of the trial judge, to be dealt with by him in light of the facts and circumstances of the particular case. *Allis-Chalmers Mfg. Co. v. City of Fort Pierce, Fla.*, 323 F. 2d 233, 242 (5th Cir. 1963); *Atlantic City Electric Company v. A. B. Chance Company*, 313 F. 2d 431, 434 (2d Cir.), stay denied 83 S. Ct. 964 (1963); *In re Grand Jury Proceedings*, 309 F. 2d 440, 444 (3d Cir. 1962). For this reason a determination of the District Court should not be disturbed except "where there has been a manifest abuse of discretion." *Atlantic City Electric Co. v. A. B. Chance, supra.* In this case, where petitioners have already seen the testimony of the witnesses, where seventeen years have passed since the alleged conspiracy began, and where the witnesses themselves submitted affidavits five years ago attesting to their lack of memory, the District Court has not abused its discretion.

CONCLUSION.

For the reasons stated above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

DAVID BERGER,
1622 Locust Street,
Philadelphia, Penna. 19103
Attorney for City of Philadelphia, et al.

GEORGE F. KUGLER, JR.,
Attorney General,
ELIAS ABELSON,
Assistant Attorney General,
State of New Jersey,
State House Annex,
Trenton, New Jersey 08625

GRANVIL I. SPECKS,
Suite 1130,
208 S. LaSalle St.,
Chicago, Illinois 60604

and

PERRY GOLDBERG,
Suite 1130,
208 S. LaSalle St.,
Chicago, Illinois 60604
Attorneys for State of New Jersey, et al.

HAROLD E. KOHN,
AARON M. FINE,
ARTHUR M. KAPLAN,
1214 IVB Building,
Philadelphia, Penna. 19103

and

SEYMOUR KURLAND,
JUDAH I. LABOVITZ,
12th Floor, Packard Building,
Philadelphia, Penna. 19102
Attorneys for McCloskey & Company, et al.

APPENDIX A.

Witness Affidavits.

(1) Watson Affidavit.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW JERSEY.

CRIMINAL No. 153-65.

UNITED STATES OF AMERICA

v.

THE AMERICAN OIL COMPANY,
THE ATLANTIC RICHFIELD COMPANY,
CITIES SERVICE OIL COMPANY,
CITIES SERVICE COMPANY,
GULF OIL CORPORATION,
HUMBLE OIL & REFINING COMPANY,
SINCLAIR REFINING COMPANY, and
SOCONY MOBIL OIL COMPANY, INC.,
Defendants.

AFFIDAVIT.

STATE OF NEW YORK
COUNTY OF NEW YORK } *ss.:*

B. S. WATSON, being duly sworn, deposes and says:

1. On February 10, 1964, and July 18, 1964, I testified under subpoena before a grand jury of this Court. I under-

stand that this grand jury subsequently returned an indictment against Cities Service Company ("Cities Service") and others. I make this affidavit in support of a motion by Cities Service for an order permitting its counsel to inspect and copy the transcript of my testimony before the grand jury.

2. I am informed that the indictment covers the period January 1, 1955 through April 8, 1965. During this period, I was a Director of Cities Service and a member of its Executive Committee; from January 1, 1955 until June 25, 1959, I was President of Cities Service; from June 25, 1959 through April 8, 1965, I was Chairman of the Board of Directors of Cities Service; from May 26, 1964 through April 8, 1965, I was also Chairman of Cities Service's Executive Committee. During the period covered by the indictment, I was also an officer and/or director of several subsidiaries of Cities Service. At present, I am a consultant to and an Honorary Director of Cities Service.

3. I have little specific present recollection of my testimony before the grand jury three and a half years ago. I do recall that I was shown several documents and was questioned about many meetings and communications which occurred during the late 1950's and early 1960's. The documents and questions related primarily to sales of gasoline in Pennsylvania and New Jersey.

4. I have no objection to the disclosure of the record of my testimony to Cities Service's counsel for use in this case. In fact, I request that such disclosure be ordered so that if I should be a witness at the trial of this case, it can be used to refresh my recollection. I make this affidavit voluntarily and without coercion.

/s/ B. S. Watson.
B. S. Watson.

Sworn to before me this 20th day of December, 1967.

/s/ JULIA R. MCGLINCHEY
Notary Public, State of New York
No. 41-7833075 Queens County
Certificate filed in New York County
Term Expires March 30, 1968

(2) Charlton Affidavit.

PRIVILEGED AND CONFIDENTIAL
FOR USE ONLY BY DEFENDANTS' COUNSEL IN THE CAPTIONED ACTION.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY.

CRIMINAL NO. 153-65.

UNITED STATES OF AMERICA

v.

THE AMERICAN OIL COMPANY, *et al.*,
Defendants.

AFFIDAVIT.

STATE OF TEXAS
COUNTY OF HARRIS

SAMUEL E. CHARLTON, being duly sworn, deposes and says:

1. I am Vice President in charge of marketing for Humble Oil & Refining Company ("Humble"). I attained that office on December 1, 1963. Prior thereto I was employed in various positions by Humble and its predecessor corporation. On October 20, 1964 I testified under subpoena before a grand jury of this Court. I understand that this grand jury subsequently returned an indictment

against Humble and others. I make this affidavit in support of a motion by Humble for an order permitting its counsel to inspect and copy the transcript of my testimony before the grand jury.

2. I am informed that the indictment covers the period January 1, 1955 through April 8, 1965. During that time I occupied the following positions with Humble and its predecessor corporation:

	Title	*Geographic Location*
1/1/55	Merchandising Mgr.	New Orleans, La.
1/31/55	Spec. Assign. N. Y. Mktg.	New York, N. Y.
3/21/55	Merchandising Mgr.	New Orleans, La.
8/15/55	Spec. Assign., Assisting Northern Region Sales Mgr.	New York, N. Y.
11/21/55	Merchandising Mgr.	New Orleans, La.
1/1/56	Asst. Division Mgr.	Bala-Cynwyd, Pa.
9/1/58	Division Manager (Acting)	Bala-Cynwyd, Pa.
4/16/59	Division Manager	Bala-Cynwyd, Pa.
1961	Asst. Mktg. Mgr., Okla. Pate Area	Chicago, Ill.
1961	Area Marketing Manager	Chicago, Ill.
1962	Region Mktg. Mgr. (Central Region)	Tulsa, Okla.
12/1/63	Vice President—Mktg. (Headquarters)	Houston, Texas

3. I have little specific present recollection of my testimony before the grand jury three years ago. I do recall that I was shown some documents and was questioned about many transactions, communications and events which were alleged to have occurred between 1956 and 1962. The documents and questions related to sales of gasoline in Pennsylvania, New Jersey and Delaware.

4. I have no objection to the disclosure of the transcript of my testimony to Humble's counsel for use in this case. In fact, I request that such disclosure be ordered so that if I should be a witness at the trial of this case, such testimony can be used to refresh my recollection. I make this affidavit voluntarily and without inducement or coercion.

/s/ SAMUEL E. CHARLTON.
Samuel E. Charlton.

Sworn to before me this 21st day of December, 1967.

/s/ NOEL G. BLACK
Notary Public

(3) Logan Affidavit.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Criminal No. 153-65.

UNITED STATES OF AMERICA

v.

THE AMERICAN OIL COMPANY,
THE ATLANTIC RICHFIELD COMPANY,
CITIES SERVICE OIL COMPANY,
CITIES SERVICE COMPANY,
GULF OIL CORPORATION,
HUMBLE OIL & REFINING COMPANY,
SINCLAIR REFINING COMPANY, AND
SOCONY MOBIL OIL COMPANY, INC.,
Defendants.

AFFIDAVIT.

STATE OF MARYLAND
COUNTY OF BALTIMORE } *ss.:*

E. J. LOGAN, being duly sworn, deposes and says:

1. On November 14, 1963, November 18, 1963, and March 12, 1964, I testified under subpoena before a grand jury of this Court. I understand that this grand jury subsequently returned an indictment against Cities Service

Oil Company ("Cities") and others. I make this affidavit in support of a motion by Cities for an order permitting its counsel to inspect and copy the transcript of my testimony before the grand jury.

2. I am informed that the indictment covers the period January 1, 1955, through April 8, 1965. From 1955 to 1956, I was Marketing Assistant to Cities' Philadelphia Division Manager; from 1956 to 1959, I was Marketing Assistant to the Philadelphia Region Sales Manager; from 1959 to 1964, I was Administrative Assistant to the Philadelphia Region Manager; since 1964, I have been price Manager of the Baltimore Region. I am still employed by Cities.

3. I have little specific present recollection of my testimony before the grand jury three and four years ago. I do recall that I was shown several documents and was questioned about many sales transactions and communications which occurred between 1955 and 1964. The documents and questions related to sales of gasoline in Pennsylvania, New Jersey and Delaware.

4. I have no objection to the disclosure of the record of my testimony to Cities' counsel for use in this case. In fact, I request that such disclosure be ordered so that if I should be a witness at the trial of this case, it can be used to refresh my recollection. I make this affidavit voluntarily and without coercion.

/s/ E. J. Logan
E. J. Logan

Sworn to before me this 15th day of December, 1967.

(Name Illegible)
My Commission Expires July 1, 1968.

(4) Sanborn Affidavit.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Criminal No. 153-65.

UNITED STATES OF AMERICA

v.

THE AMERICAN OIL COMPANY,
THE ATLANTIC REFINING COMPANY,
CITIES SERVICE OIL COMPANY,
CITIES SERVICE COMPANY,
GULF OIL CORPORATION,
HUMBLE OIL & REFINING COMPANY,
SINCLAIR REFINING COMPANY, AND
SOCONY MOBIL OIL COMPANY, INC.,
Defendants.

AFFIDAVIT.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA } *ss.:*

ARTHUR R. SANBORN, being duly sworn, deposes and says:

1. On March 30, 1964, I testified under subpoena before a grand jury of this Court. I understand that this grand jury subsequently returned an indictment against The Atlantic Refining Company, (now Atlantic Richfield Company, hereinafter referred to as "Atlantic Richfield") and others. I make this affidavit in support of a motion

by Atlantic Richfield for an order permitting its counsel to inspect and copy the transcript of my testimony before the grand jury.

2. I am informed that the indictment covers the period from January 1, 1955 through April 8, 1965. From July 14, 1952 to September 3, 1956, I was District Manager, Philadelphia Suburban District, for Atlantic Richfield; from September 3, 1956 to September 2, 1957, I was Manager Sales Group, Philadelphia-New Jersey Sales Group, for Atlantic Richfield; from September 2, 1957 to September 15, 1958, I was District Manager, Philadelphia Suburban District, for Atlantic Richfield; from September 15, 1958 to February 1, 1966, I was Commercial Accounts Manager for Atlantic Richfield.

3. I have no specific recollection of my testimony before the grand jury. I do recall that I was questioned about transactions and communications which occurred between 1955 and 1962. The questions related to sales of gasoline in Pennsylvania, New Jersey, and Delaware.

4. I have no objection to the disclosure of the record of my testimony to Atlantic Richfield's counsel for use in this case. In fact, I request that such disclosure be ordered so that if I should be a witness at the trial of this case, it can be used to refresh my recollection. I make this affidavit voluntarily and without coercion.

/s/ ARTHUR R. SANBORN
Arthur R. Sanborn

Sworn to before me this 18th day of December, 1967.

/s/ MARGARET J. MOYER
Notary Public
Philadelphia County
My Commission Expires July 24, 1968

APPENDIX B.

Affidavit of Petitioner's Counsel.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY.

CRIMINAL NO. 153-65.

UNITED STATES OF AMERICA

v.

THE AMERICAN OIL COMPANY,
THE ATLANTIC RICHFIELD COMPANY,
CITIES SERVICE OIL COMPANY,
CITIES SERVICE COMPANY,
GULF OIL CORPORATION,
HUMBLE OIL & REFINING COMPANY,
SINCLAIR REFINING COMPANY, AND
MOBIL OIL CORPORATION,

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION TO INSPECT AND COPY GRAND JURY TESTIMONY OF OFFICERS AND EMPLOYEES OF HUMBLE OIL & REFINING COMPANY.

STATE OF NEW YORK
COUNTY OF NEW YORK } *ss.:*

A. DONALD MACKINNON, being duly sworn, says:

1. I am one of the attorneys for defendant Humble Oil & Refining Company (herein "Humble"). I make this

affidavit in support of Humble's motion to permit its attorneys to inspect and copy the grand jury testimony of Humble's witnesses. The affidavits of such witnesses submitted herewith show that each has little recollection of his testimony before the grand jury and has expressed the desire that his testimony be made available to Humble's attorneys engaged in defense of this action. The order sought by the instant motion would permit Humble's attorneys to copy only those portions of the testimony which they believe are needed for Humble's defense of this action.

2. The accompanying memorandum of law submitted by defendants sets forth the reasons why Humble is entitled to the discovery sought under the recent amendments to Rule 16 of the Rules of Criminal Procedure, and also under the "particularized need" standard which the courts have formulated for motions seeking inspection of grand jury testimony under Rule 6(e). In this affidavit, I shall merely outline the pertinent and indisputable facts which relate to this motion.

3. The grand jury which issued the indictment commenced its investigation about October, 1963. It sat for approximately 18 months. Its investigation concerned the marketing of gasoline and other petroleum products between the years 1952 (or earlier) and 1965 in the States of New Jersey, Pennsylvania and Delaware by defendants, several other major oil companies and a large number of distributors and dealers of petroleum products. So far as defendants are apprised, the grand jury did not investigate other matters. The grand jury was apparently preceded by an FBI investigation of the same subject matter.

4. It is my understanding that six Humble witnesses testified before the grand jury under subpoena. I am in-

formed that at least forty-six officers and employees of other defendants also so testified. I do not know how many other witnesses appeared before the grand jury, but I am informed that testimony was given by at least fifteen officers or employees of unindicted alleged co-conspirators and by many other persons as well. I understand that all other defendants produced substantial quantities of documents to the grand jury, as did Humble. In short, the Government has made full use of its powers and resources to conduct a sweeping investigation of the marketing of gasoline in a three-state area over a 13-year period.

5. The indictment alleges violations of the Sherman Act in the States of New Jersey, Pennsylvania and Delaware from January 1, 1955, until April 8, 1965. The Government states in its bill of particulars that it is claiming an implied agreement among defendants and co-conspirators and that it will rely among other things on alleged "acts" of named and unnamed individuals, including the six Humble witnesses who appeared before the grand jury and whose "acts" are alleged to be the "acts" of Humble.

6. By this motion, Humble seeks permission for its counsel to inspect and copy certain grand jury testimony of its witnesses. Each of the six Humble witnesses have informed Humble he can recall his grand jury testimony only in the broadest sense, and, as previously stated, that he desires Humble's attorneys to examine his testimony. (Each of these six men has furnished Humble with an affidavit in which he states that he has little specific recollection of his grand jury testimony and that he is willing to have Humble's counsel inspect his testimony. The affidavits are annexed.)

7. Specifically, this motion seeks the testimony of the following Humble witnesses who testified before the grand jury:

(a) Samuel E. Charlton—Mr. Charlton is presently a Vice President of Humble in charge of Marketing. He has served in that post since 1963. Previously he had served in various other capacities and was, among other places, located in Pennsylvania. He testified before the grand jury on October 26, 1964, and was questioned, among other things, about alleged events which occurred as early as 1956. The bill of particulars sets forth ten "acts" in which Mr. Charlton allegedly participated and for which Humble is claimed to be responsible.

(b) D. F. Dickey—During the period covered by the indictment, Mr. Dickey held several marketing and staff positions in Humble and its predecessor corporation; from 1955 to 1956, he was District Manager; from 1956 to 1957, he was Merchandising Manager. He testified before the grand jury on June 22, 1964. The bill of particulars sets forth four "acts" in which Mr. Dickey allegedly participated and for which Humble is claimed to be responsible.

(c) John R. Probert—During the period covered by the indictment, Mr. Probert held several positions in connection with the New Jersey operations of Humble and its predecessor corporation. In 1958, he was Assistant District Manager; in 1959, he was Assistant Manager (Acting). He testified before the grand jury on December 2, 1963, and was questioned, among other things, about alleged events which occurred as early as 1959. The bill of particulars sets

forth four "acts" in which Mr. Probert allegedly participated and for which Humble is claimed to be responsible.

(d) Albert F. Spangenberg—Throughout the period 1955-1962, Mr. Spangenberg was located in Philadelphia, primarily as District Manager for Humble and its predecessor corporation. In July, 1966, he retired. He testified before the grand jury on June 4, 1964, and was questioned, among other things, about alleged events which occurred as early as 1955. The bill of particulars sets forth seven "acts" in which Mr. Spangenberg allegedly participated and for which Humble is claimed to be responsible.

(e) Beverly W. LaDage—Since 1956, Mr. LaDage has been Assistant District Manager and District Manager in the Wilmington office of Humble and its predecessor corporation. He testified before the grand jury on December 2, 1963, and was questioned, among other things, about events which allegedly occurred as early as 1955. The bill of particulars sets forth nineteen "acts" in which Mr. LaDage allegedly participated and for which Humble is claimed to be responsible.

(f) Edmund J. Fallon—From 1955 to the present, Mr. Fallon has held various marketing positions in the Pennsylvania offices of Humble and its predecessor corporation. He testified before the grand jury on March 30, 1964, and was questioned, among other things, about events which allegedly occurred as early as 1955. The bill of particulars sets forth seven "acts" in which Mr. Fallon allegedly participated and for which Humble is claimed to be responsible.

8. If the trial of this action is to be a search for the truth, as it should be—and not a sporting event in which the prosecution has full and exclusive access to grand jury testimony given by the Humble witnesses—Humble attorneys should be allowed to inspect the testimony of such witnesses and to copy those portions of the testimony which it needs for its defense of the action. The Government claims in its bill of particulars that the "acts" of these six Humble witnesses constitute the "acts" of Humble and help to establish Humble's guilt. In light of the fact that the Government is charging Humble with criminal responsibility for the alleged "acts" of certain of its employees, the testimony of these Humble witnesses must, in fairness, be treated as the testimony of Humble within the meaning of Rule 16(a)(3). (The pertinent provisions of Rule 16 are set out and discussed in defendant's memorandum of law.)

9. As shown in the accompanying memorandum of law, neither the indictment (which this Court has described as a "model of generality") nor the bill of particulars adequately apprises Humble of the substance of the Government's case. Under all the circumstances, it is evident that Humble cannot adequately prepare to defend itself against the charges alleged in this action unless it is permitted to inspect and copy the testimony here moved for. Accordingly, on the basis of the information set out above, and for the reasons given in defendants' memorandum of law, I respectfully submit that the motion should be granted.

/s/ A. Donald MacKinnon.
A. Donald MacKinnon.

Sworn to before me this 4th day of January, 1968.

/s/ RICHARD E. BROOKS
Notary Public

Richard E. Brooks
Notary Public, State of New York
No. 31-514845
Qualified in New York County
Term Expires March 30, 1968